

# **Financial Administration**

## **Financial Administration**

- 49 C.F.R. Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- United States Department of Transportation Order No. 4600.17, Grant Management Requirements
- Los Angeles County Metropolitan Transportation Authority - General Cost Guidelines

## PART 18-UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 49 U.S.C. 322(a).

SOURCE: 53 FR 8086 and 8597. Mar. 11.

1988. unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958. June 18. 1984. 52 FR 20198, May 29, 1987, and 53 FR 8028, March 11, 1988.

### Subpart A-General

## § 18.1 Purpose and scope of this part...

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

## § 18.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

## § 18.3 Definitions.

As used in this part:

**Accrued expenditures** mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received: (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees: and (3) other amounts becom-

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ing owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

**Accrued income** means the sum of: (1)

Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

**Acquisition cost** of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

**Administrative** requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

**Awarding** agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

**Cash contributions** means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant. And

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means a procurement subcontract under a contract.

**Cost sharing or matching** means the value of the third party in-kind contributions and the portion of the costs of a Federally assisted Project or program not borne by the Federal Government.

**Cost-type contract** means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs with or without a fee.

**Equipment** means tangible, nonexpendable, Personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

**Expenditure Report** means: (1) For non-construction grants, the SF-269 "Financial Status Report" (or other equivalent Report; (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement\*" (or other equivalent report).

**Federally recognized Indian tribal government** means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act. 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

**Government** means a State or local government or a federally recognized Indian tribal government.

**Grant** means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

**Grantee** means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

**Local government** means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law). any other regional or interstate government entity, or any agency or instrumentality of a local government.

**Obligations** means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

**OMB** means the United States Office of Management and Budget.

**Outlays (expenditures)** mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

**Percentage of completion method** refers to a system under which payments are made for construction work according to the percentage of completion of the

work, rather than to the grantee's cost incurred.

Prior **approval** means documentation evidencing consent prior to incurring specific cost.

**Real** property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

**Share**, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

**State** means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

**Subgrant** means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

**Subgrantee** means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

**Supplies** means all tangible personal property other than "equipment" as defined in this part.

**Suspension** means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from partici-

pating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

**Termination** means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's under-estimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

**Terms of a grant or subgrant** mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

**Third party in-kind contributions** mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

**Unliquidated obligations** for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

**Unobligated balance** means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

#### § 18.4 Applicability.

(a) **General.** Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in

accordance with the exception provision of §§18.6 of:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title v, subtitle D, chapter 2, Section 583-the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921). Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C Of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following Programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(G); HHS grants for WIN are subject to this part):

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX Of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-l(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

**(b) Entitlement** programs. Entitlement programs enumerated above in §18.4(a)(3) through (8) are subject to subpart E.

### § 18.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §18.6.

### § 18.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified

regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(1) All Departmental requests for exceptions shall be processed through the Assistant Secretary of Administration.

(2) [Reserved]

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(1) All case-by-case exceptions may be authorized by the affected operating administrations or departmental offices, with the concurrence of the Assistant Secretary for Administration.

(2) [Reserved]

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 66 FR 19646, Apr. 19, 1995]

### Subpart B-Pre-Award Requirements

#### § 18.10 Forms for applying for grants.

(a) Scope. (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR part 630, subpart B, 23 CFR part 420, subpart A, and 49 CFR part 458.

(b) **Authorized forms and instructions for governmental organizations.** (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other Supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 6066, Mar. 11, 1988]

#### § 18.11 state plans.

(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) **Requirements.** A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) **Assurances.** In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or



(3) Develop its own language to the extent permitted by law.

(d) **Amendments.** A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

### **§18.12 Special grant or subgrant conditions for "high-risk" grantees.**

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding Official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed

and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

## **Subpart C-Post-Award Requirements**

### **FINANCIAL ADMINISTRATION**

### **§ 18.20 Standards for financial management systems.**

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to-

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) **Financial reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) **Accounting records.** Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) **Internal control.** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) **Budget control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant

or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) **Allowable cost.** Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) **Cash management.** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR part 630, regarding a uniform system of ac-

counts and records and a uniform reporting system for certain grantees.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

### § 18.21 Payment.

(a) **Scope.** This Section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) **Basic standard.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) **Advances.** Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) **Reimbursement.** Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) **Working capital advances.** If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding

agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements-

**(f) Effect of program income, refunds, and audit recoveries on payment.** (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

**(g) Withholding payments.** (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 18.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

**(h) Cash depositories.** (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of

minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) **Interest earned on advances.** Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.22 Allowable costs.

**(a) Limitation on use of funds.** Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

**(b) Applicable cost principles.** For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a---	Use the principles in---
State, local or Indian tribal government	OMB Circular A-87.

For the costs of a-	Use the principles in----
Privatenonprofit organization other than an (1) institution of higher education (2) hospital, or (3) organization named In OMB Circular A-122 as not subject to that circular.	OMB Circular A-122
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named In OMB Circular A-122 as not subject to mat cira-lar.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(l) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

### § 18.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) **Liquidation of obligations.** A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may ex-

tend this deadline at the request of the grantee.

### §18.24 Matching or cost sharing.

(a) **Basic rule: Costs and contributions acceptable.** With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) **Qualifications and exceptions-(1) Costs borne by other Federal grant agreements.** Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) **General revenue sharing.** For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6762 are not considered Federal grant funds.

(3) **Cost or contributions counted towards other Federal costs-sharing requirements.** Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) **Costs financed by program income.** Costs financed by program income, as defined in §18.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 18.25(g).)

(5) **Services or property financed by income earned by contractors.** Contractors

under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) **Special standards for third party in-kind contributions.** (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or Property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to

the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) **Valuation of donated services-(1) Volunteer services.** Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) **Employees of other organizations.** When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal

line of work, the services will be valued at the employee's regular rate of Pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

**(d) Valuation of third party donated supplies and loaned equipment or space.**

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

**(e) Valuation of third party donated equipment, buildings, and land.** If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) **Awards for capital expenditures.** If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) **Other awards.** If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as

an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in 518.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

**(f) Valuation of grantee or subgrantee donated real property for construction/acquisition.** If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

**(g) Appraisal of real property.** In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

[53 FR 8086 and 8087, Mar. 11, 1983, as amended at 53 FR 8086, Mar. 11, 1988]

**§18.25 Program income.**

(a) **General.** Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds,

from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) **Definition of program income.** Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) **Cost of generating program income.** If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) **Governmental revenues.** Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) **Royalties.** Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 18.34.)

(f) **Property.** Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 18.31 and 18.32.

(g) **Use of program income.** Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts

of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) **Deduction.** Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) **Addition.** When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) **Cost sharing or matching.** When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

(h) **Income after the award period.** There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a)

of this section). unless the terms of the agreement or the Federal agency regulations provide otherwise.

[53 FR 8086 and 8087, Mar. 11, 1988. as amended at 53 FR 8087, Mar. 11, 1988]

### § 18.26 Non-Federal audits.

(a) **Basic** rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) **Subgrantees.** State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements,

(c) **Auditor selection.** In arranging for audit services, § 18.36 shall be followed.

### CHANGES, PROPERTY, AND SUBAWARDS

### § 18.30 Changes.

(a) **General.** Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) **Relation to cost principles.** The applicable cost principles (see § 18.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) **Budget changes-01 Nonconstruction projects.** Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) **Construction projects.** Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.



(3) **Combined construction and non-construction projects.** When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non-construction to construction or vice versa.

(d) **programmatic changes.** Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability Of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects. contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 18.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) **Additional prior approval requirements.** The awarding agency may not require Prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) **Requesting prior approval.** (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §18.22) may be made by letter.

(3) A request by a subgrantee for Prior approval will be addressed in writing to the grantee. The grantee Will Promptly review such request and

shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

### **§ 18.31 Real property.**

(a) **Title.** Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) **Use.** Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) **Disposition.** When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) **Retention of title.** Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) **Sale of property.** Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net pro-

ceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) **Transfer of title.** Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

[53 FR 8086 and 8087. Mar. 11, 1988. as amended at 53 FR 8087. Mar. 11, 1988]

### § 18.32 Equipment.

(a) **Title.** Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) **States.** A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) **Use.** (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on

the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 18.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) **Management requirements.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

**(e) Disposition.** When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

**(f) Federal equipment.** In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

**(g) Right to transfer title.** The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing Statutes. Such transfers shall be subject to the following standards:

(1) The Property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120

calendar-day period the grantee shall follow §13.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

### § 18.33 Supplies.

(a) **Title.** Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) **Disposition.** If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

### § 18.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

### §18.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. "Debarment and Suspension."

### § 18.36 Procurement.

(a) **States.** When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other con-

tract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) **Procurement standards.** (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohi-

bitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 518.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the

named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) **Methods of procurement to be followed for Procurement by small purchase procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by **sealed bids** (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them suffi-

cient time prior to the date set for opening the bids:

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Bequests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and rea-

sonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by **noncompetitive** proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

**(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.** (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small-

er tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

**(f) Contract cost and price.** (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality

of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

**(g) Awarding agency review.** (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the

apparent low bidder under a sealed bid procurement: or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) **Bonding requirements.** For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) **A bid guarantee from each bidder equivalent to five percent of the bid price.** The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contrac-



tual documents as may be required within the time specified.

(2) **A performance bond on the part of the contractor for 100 percent of the contract price.** A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligation under such contract.

(3) **A payment bond on the part of the contractor for 100 percent of the contract price.** A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) **Contract provisions.** A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 Of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction

contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding

methods that are “effective in securing competition.” Detailed construction contracting procedures are contained in 23 CFR part 635, subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(l) and 46 CFR part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1968(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such con-

tracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988; 60 FR 19639, 19647, Apr. 19, 1995]

### § 18.37 Subgrants.

(a) **States.** States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations:

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 18.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) **All other grantees.** All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon

them by Federal statutes and regulations.

(c) **Exceptions.** By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

- (1) Section 18.10;
- (2) Section 18.11;
- (3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §18.21; and
- (4) Section 18.50.

#### REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

### § 18.40 Monitoring and reporting program performance.

(a) **Monitoring by grantees.** Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) **Nonconstruction performance reports.** The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) **Construction performance reports.** For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(1) Section 12(h) of the UMT Act of 1984, as amended, requires pre-award testing of new buses models.

(d) **Significant developments.** Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

**(f) Waivers, extensions.** (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any Performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

**[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]**

#### § 18.41 Financial Reporting.

(a) **General.** (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) **Financial Status Report--(1) Form.** Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all non-construction grants and for construction grants when required in accordance with § 18.41(e)(2)(iii).

(2) Accounting basis Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) **Frequency.** The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) **Due date.** When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) **Federal Cash Transactions Report--**

(1) Form. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format

of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

**(2) Forecasts of Federal cash requirements.** Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

**(3) Cash in hands of subgrantees.** When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

**(4) Frequency and due date.** Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

**(d) Request for advance or reimbursement-(1) Advance payments.** Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 18.41(b)(3).

**(e) Outlay report and request for reimbursement for construction programs. (1) Grants that support construction activities paid by reimbursement method. (i)** Requests for reimbursement under construction grants will be submitted on Standard Form 271. Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies

may, however, prescribe the Request for Advance or Reimbursement form, specified in § 18.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 18.41(b)(3).

**(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance. (i)** When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271. Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 18.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 18.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 18.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

**(3) Accounting basis.** The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 18.41(b)(2).

**(f) Notwithstanding the provisions of** paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

## § 18.42 Retention and access requirements for records.

**(a) Applicability. (1)** This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 18.36(i)(10).

(b) **Length of retention period.** (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) **Starting date of retention period—(1) General.** When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) **Real property and equipment records.** The retention period for real Property and equipment records starts from the date of the disposition or re-Placement or transfer at the direction of the awarding agency.

(3) **Records for income transactions after grant or subgrant support.** In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) **Indirect cost rate proposals cost allocations plans, etc.** This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) **If submitted for negotiation.** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) **If not submitted for negotiation.** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) **Substitution of microfilm.** Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) **Access to records—(1) Records of grantees and subgrantees.** The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) **Expiration of right of access.** The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

**(f) Restrictions on public access.** The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law. grantees and subgrantees are not required to permit public access to their records.

#### § 18.43 Enforcement.

**(a) Remedies for noncompliance.** If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

**(b) Hearings, appeals.** In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

**(c) Effects of suspension and termination.** Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective

date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

**(d) Relationship to debarment and suspension.** The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §18.35).

#### § 18.44 Termination for convenience.

Except as provided in § 18.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 18.43 or paragraph (a) of this section.

### Subpart D-After-The-Grant Requirements

#### § 18.50 Closeout.

**(a) General.** The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

**(b) Reports.** Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe.

These may include but are not limited to:

- (1) *Final performance or progress report.*
- (2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*
- (3) *Final request for payment (SF-270) (if applicable).*
- (4) *Invention disclosure (if applicable).*
- (5) *Federally-owned property report:*

In accordance with § 18.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

**§ 18.51 Later disallowances and adjustments.**

The closeout of a grant does not affect:

- (a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;
- (b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
- (c) Records retention as required in § 18.42;
- (d) Property management requirements in §§18.31 and 18.32; and
- (e) Audit requirements in §18.26.

**§ 18.52 Collection of amounts due.**

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable

period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.





U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

# ORDER

DOT 4600.17

9-5-95

Subject: GRANT MANAGEMENT REQUIREMENTS

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1. PURPOSE. This Order consolidates all previous DOT Orders pertaining to the administration of financial assistance programs and prescribes the procedures for implementing laws, regulations, Office of Management and Budget (OMB) Circulars and Executive Orders providing guidance for the administration of DOT financial assistance programs.

For purposes of this Order, "financial assistance" means the forms of assistance that provide funds to eligible recipients, e.g., grants and cooperative agreements. It does not include loans, loan guarantees, interest subsidies or insurance.

A grant or cooperative agreement is the transfer of money, property, services, or anything of value to an eligible recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than the acquisition, by purchase, lease or barter, of property or services for the direct benefit of the Federal Government. A cooperative agreement differs from a grant in that, in the case of the former, substantial involvement is anticipated between the Federal Government and the recipient.

2. CANCELLATION. The following DOT Orders are cancelled:
- DOT 1340.7B, DOT Grant Information System, dated 7-25-94;
  - DOT 4000.8A, Use of Contracts, Grants and Cooperative Agreements, dated 8-17-82;
  - DOT 4200.5C, Governmentwide Debarment, Suspension and Ineligibility, dated 5-9-89;
  - DOT 4600.9C, Grants and Cooperative Agreements with State and Local Governments, dated 7-14-88;
  - DOT 4600.10, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Institutions, dated 1-19-77;
  - DOT 4600.11A, Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments, dated 9-9-82;

- g. DOT 4600.13, Intergovernmental Review of DOT Programs and Activities, dated 10-3-83;
  - h. EC? 4600.14, Principles for Determining Costs Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations, dated 9-18-84;
  - i. DOT 4600.15A, Audits of Federal Assistance Recipients, dated 2-22-93; and,
  - j. DOT 4600.16, DOT Grant Management Council, dated 2-21-92.
3. BACKGROUND. Executive Order 12861 of September 12, 1993, required that all executive branch departments and agencies eliminate at least 50 percent of their internal regulations by September 11, 1996. OMB defined internal regulations in an October 18, 1993, implementing memorandum as "any agency directive . . . that prescribes agency policies and procedures -- including internal agency acquisition regulations and grant management requirements --- that pertain to an agency's internal organization, management, or personnel". The Executive Order was one of several Federal initiatives designed to improve productivity, streamline operations, and improve service to the public.
- Several DOT Performance Review recommendations addressed the problem of a lack of centralized information for financial assistance program guidance. This consolidation of DOT program guidance addresses both requirements to centralize and reduce the amount of internal regulations. A summary of the disposition of former guidance is provided on page 4. A list of Appendices to this Order is provided on page 5.
4. POLICY. DOT policy is to comply with all instructions and standards as contained in Appendices A through H of this Order except where enabling legislation for a specific financial assistance program prescribes different policies or requirements, or where a specific exemption has been granted by OMB or the Assistant Secretary for Administration in accordance with paragraph 6 of this Order.
5. APPLICABILITY. The provisions of this Order and its Appendices apply to all operating administrations and secretarial offices that award Federal assistance, or provide policy guidance to departmental financial assistance managers.

6. RESPONSIBILITIES.

- a. The Assistant Secretary for Administration shall issue additional instructions as required for implementing the contents of this Order only in those instances where the prescribed requirements need further clarification and/or implementation.
- b. Operating administrations and applicable secretarial offices shall establish any necessary implementing procedures to comply with this Order.
- c. Operating administrations and applicable secretarial offices shall submit all new and/or revised procedures which are designed to implement the requirements of this Order, or the directives this Order implements, to the Assistant Secretary for Administration for clearance before the procedures are issued. Procedures will be reviewed to determine compliance with the appropriate guidance.
- d. When required, operating administrations and applicable secretarial offices shall request waivers to the requirements of this Order, or the directives this Order implements, from the Assistant Secretary for Administration. Waivers must be accompanied by sufficient information to justify an exemption.

7. IMPLEMENTATION. The policy and procedures contained in this Order and its Appendices are effective immediately. Implementing directives required by paragraph 6 shall be submitted within 90 days of the publication of this Order.

FOR THE SECRETARY OF TRANSPORTATION:



Melissa J. Spillenkothen  
Assistant Secretary for  
Administration

<b>DISPOSITION OF CURRENT DOT GRANT ADMINISTRATION GUIDANCE</b>
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### DOT ORDERS

<u>Order</u>	<u>Title</u>	<u>Coverage</u>
DOT 1340.7B	DOT Grant Information System	Appendix H
DOT 4000.8A	Use of Contracts, Grants and Cooperative Agreements	Appendix A.
DOT 4200.5C	Governmentwide Debarment, Suspension, & Ineligibility	Appendix E.
DOT 4600.9C	Grants and Cooperative Agreements with State and Local Governments	Appendix B.
DOT 4600. 10	Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Institutions	Appendix B.
DOT 4600.11 A	Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments	Appendix C.
DOT 4600.13	Intergovernmental Review of DOT Programs and Activities	Appendix F.
DOT 4600.14	Principles for Determining Costs Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations	Appendix C.
DOT 4600.15A	Audits of Federal Assistance Recipients	Appendix D.
DOT 4600.16	DOT Grant Management Council	Appendix G.

### DOT POLICY MEMOS

<u>Memo</u>	<u>Title</u>	<u>Coverage</u>
M-60 Memo of 24 Nov. 1981	Travel Costs of Elected Officials	Appendix C
M-60 Memo of 31 Jan. 1986	Cognizant Agency Assignments for Audits of State and Local Governments	Appendix D.
M-60 Memo of 4 April 1990	Government-Wide Common Rule - New Restrictions on Lobbying	Appendix H.
M-60 Memo of 26 June 1990	Government-wide Guidance for New Restrictions on Lobbying	Appendix H.
M-60 Memo of 24 Aug 1992	Negotiation of State and Local Indirect Cost Rates	Appendix C.

### ADDITIONAL REQUIREMENTS NOT CONTAINED IN CURRENT GUIDANCE

<u>Directive</u>	<u>Item</u>	<u>Coverage</u>
M-60 Memos	Updates to the Catalog of Federal Domestic Assistance	Appendix H.
M-60 Memos	Semi-annual Reports of Lobbying Activities	Appendix H.

## APPENDICES

### APPENDIX A: USE OF CONTRACTS, GRANTS AND COOPERATIVE AGREEMENTS

Implements Federal requirements on the use of grants, cooperative agreements and contracts, 31 U.S.C. §§ 6301 et seq; OMB Circular A-102, Revised; OMB Circular A-110, Revised.

### APPENDIX B: ADMINISTRATIVE REQUIREMENTS FOR FINANCIAL ASSISTANCE PROGRAMS

Implements 49 CFR parts 18 and 19; OMB Circular A-102, Revised; OMB Circular A-110, Revised.

### APPENDIX C: COST PRINCIPLES FOR FINANCIAL ASSISTANCE PROGRAMS

Implements 49 CFR parts 18 and 19; OMB Circular A-21, Revised; OMB Circular A-87, Revised; OMB Circular A-122, Revised.

### APPENDIX D: AUDITS OF FEDERAL ASSISTANCE RECIPIENTS

Implements 49 CFR part 90; OMB Circulars A-128, A-133.

### APPENDIX E: DEPARTMENT AND SUSPENSION

Implements 49 CFR part 29.

### APPENDIX F: INTERGOVERNMENTAL REVIEW OF PROGRAMS AND ACTIVITIES

Implements.49 CFR part 17; Executive Order 12372.

### APPENDIX G: DOT GRANT MANAGEMENT COUNCIL

### APPENDIX H: ADDITIONAL REPORTING REQUIREMENTS

Implements 31 U.S.C. § 6102a - Grant Information System;  
31 U.S.C § 6104 - Catalog of Federal Domestic Assistance;  
49 CFR part 20 - Lobbying Reporting Requirements.

USE OF CONTRACTS, GRANTS AND COOPERATIVE AGREEMENTS

1. PURPOSE. This Appendix provides departmental guidance for implementing Federal statutes, codified at 31 U.S.C §§ 6301 et seq., establishing requirements on the use of grants, cooperative agreements and contracts.
2. BACKGROUND. Section 6301 of 31 U.S.C. provides standards that agencies are required to use in selecting among contracts, grants or cooperative agreements. The intent is to prescribe uniform criteria to assist agencies in distinguishing differences between the legal instruments based on the Federal purpose in the relationship. It does not convey new authority to make assistance awards independent of agency program legislation.

A contract is used when the principal purpose of a transaction is to acquire property and services for direct DOT use. A grant or a cooperative agreement is used when the principal purpose is to transfer funds or resources to assist recipients in acquiring property or services to carry out a public purpose of support or stimulation. Generally, grants are used where there is less specific Federal supervision and oversight of project activities. Cooperative agreements are used when there is substantial involvement by the granting agency in grant project activities.

Often, funds are provided for direct DOT use which are in turn provided to a third party. The choice of instruments in this type of transaction depends solely on the purpose of the transaction. If the intent is to acquire the recipient's services to carry out a DOT program function, a contract is required. If the intent is to aid the recipient to carry out its functions, a grant or cooperative agreement is appropriate.

3. REQUIRED ACTIONS. Each Operating Administration or Secretarial Office that awards contracts, grants, or cooperative agreements shall:
  - a. Determine whether there exists substantive authority to award a grant or cooperative agreement. If such authority exists, determine whether the principal purpose of a transaction is to acquire property and services for direct DOT benefit or use, or to transfer funds to assist recipients in accomplishing public purposes.

- b. Award and administer each of the legal instruments in accordance with the appropriate directives.
  - (1) Contracts will be awarded and administered in accordance with the provisions of the Federal Acquisition Regulation (FAR), the Transportation Acquisition Regulation (TAR), the Transportation Acquisition Manual (TAM), and other DOT directives covering contracting activities.
  - (2) Grants and cooperative agreements with units of State and local governments will be awarded and administered in accordance with OMB Circular A-102 and 49 CFR part 18.
  - (3) Grants and cooperative agreements with universities, hospitals, and other nonprofit organizations will be awarded and administered in accordance with OMB Circular A-110 and 49 CFR part 19.
  - (4) Grants and cooperative agreements with for-profit organizations will be awarded and administered in accordance with applicable program procedures. The use of 49 CFR part 19 is encouraged.
- c. Obtain the maximum competition practicable in awarding grants or cooperative agreements whenever discretion is permitted in selecting recipients. Unless congressionally directed or when awards are made to State or local governments, when competition has not been sought, a justification shall be prepared. The justification shall include the basis for not competing the award and a rationale for selecting the grantee. Justifications must be approved by the Operating Administrator or Secretarial Officer or a designee. Suggested guidelines for levels of approval are contained in the FAR subpart 6.304 and the TAM subpart 1206.304.
- d. As required by Section 316 of the Federal Property and Administrative Services' Act of 1949, as amended, 41 U.S.C. § 266, new awards for research, development, test or evaluation must be based on merit-based selection procedures. This section provides that a provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal government entity unless that provision of law specifically refers to Section 316, identifies the specific entity involved, and states that the award is required by law in contravention of the policy set forth in Section 316.

ADMINISTRATIVE REQUIREMENTS FOR FINANCIAL ASSISTANCE PROGRAMS

1. PURPOSE. This Appendix provides departmental guidance for implementing OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments, 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and 49 CFR part 19 (same title).
2. BACKGROUND. On March 12, 1987, the President directed all affected agencies to issue a common grants management rule to adopt Governmentwide terms and conditions for financial assistance to State and local governments. OMB Circular A-102 was revised in 1988 to provide additional guidance to Federal agencies. DOT issued its common rule on March 11, 1988, as 49 CFR part 18. The common grants management rule allows States to use their own procedures to manage their financial management, equipment, and procurement systems. OMB Circular A-102 was revised on October 14, 1994, "to include updated direction on: (1) implementation of the metric system; (2) review of infrastructure investment; (3) implementation of the Resource Conservation and Recovery Act; and (4) public announcement of the amount of Federal funds used in certain contract awards.

Administrative requirements for management of grants to nonprofit organizations programs are contained in 49 CFR part 19, originally published as an interim final rule on April 4, 1994. The rule incorporates and reflects the provisions of OMB Circular A-110. The revised Circular was developed by an interagency task force for Governmentwide use in a common rule format to facilitate regulatory adoption by executive departments and agencies.

Part of these efforts included DOT obtaining required paperwork clearance for all standard forms and reporting requirements in 49 CFR parts 18 and 19. However, OMB approval must be obtained for any additional reporting requirements. Both rules permit deviations, but they must be based on statute or approved by either OMB (for class deviations) or the Office of the Secretary (for individual cases).



3. REQUIRED ACTIONS.

- a. The Assistant Secretary for Administration shall issue additional specific instructions for implementing OMB Circulars A-102 and A-110, and 49 CFR parts 18 and 19 only in those instances where the prescribed requirements need further clarification and/or implementation.
- b. The Operating Administrations and Secretarial Offices shall:
  - (1) Establish additional instructions, if required, for implementing the above directives.
  - (2) If imposing additional requirements on "high risk" grantees, as authorized by 49 CFR part 18.12, forward copies of such notifications to the Assistant Secretary for Administration and the Deputy Assistant Inspector General for Audits.

COST PRINCIPLES FOR FINANCIAL ASSISTANCE PROGRAMS

1. PURPOSE. This Appendix provides departmental guidance for implementing Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, OMB Circular A-122, Cost Principles for Nonprofit Organizations, and OMB Circular A-21, Cost Principles for Educational Institutions.
2. BACKGROUND. The costs of Federal financial assistance performed by State or local governments are determined by the provisions of OMB Circular A-87. The Circular requires State and local governments to substantiate indirect costs through formal indirect cost proposals or cost allocation plans, and provides for the negotiation, approval and audit of those plans. OMB has assigned DOT as the cognizant Federal agency for all State highway agencies and other State transportation-related agencies.

The costs of Federal financial assistance performed or administered by nonprofit organizations are determined by the provisions of OMB Circular A-122. The Circular provides principles and policy-guidance for recognizing costs incurred by nonprofit organizations, and lists methods for allocating indirect costs and computing indirect cost rates. The cognizant Federal agency negotiates and approves indirect cost rates. OMB Circular A-21 establishes principles for determining costs applicable to financial assistance to certain educational institutions. The Circular was revised in 1993 to include: (1) a limitation of a 24 percent fixed allowance for the administrative costs portion of indirect costs; (2) permission to use multi-year predetermined indirect cost rates for research agreements; and (3) a consistent policy for adjustment of indirect cost rates for proposals subsequently containing unallowable costs.

The cost principles established by subpart 31.2 of the Federal Acquisition Regulation shall be used for for-profit organizations.

3. REQUIRED ACTIONS.
  - a. The Assistant Secretary for Administration shall issue additional specific instructions for implementing OMB Circulars A-21, A-87, and A-122 only in those instances where the prescribed requirements need further clarification.

- b. In those cases where DOT is the cognizant Federal agency, the Office of Inspector General shall perform or arrange for audits of recipients' indirect cost proposals or cost allocation plans as necessary. Audits are normally performed only where a significant problem exists in a grantee's financial system.
- c. The Operating Administrations (OAs) and Secretarial Offices (SOs) shall:
  - (1) Establish additional instructions, if required, for implementing the above directives.
  - (2) If assigned cognizant responsibility, review and approve indirect cost rates and cost allocation plans in accordance with OMB Circulars A-87, A-21, and A-122. The cognizant OA or SO shall also request required audits and prepare the negotiation agreement. Each agreement shall be made available to appropriate OAs and SOs and other affected Federal agencies.
  - (3) Accept indirect cost rate and cost allocation plan agreements negotiated and approved by the Federal cognizant agency or by the OA or SO within DOT having cognizant administrative responsibility.
  - (4) Provide technical assistance to recipients in cases where they need help in determining appropriate subrecipient costs and indirect cost rates. The cognizant OA or SO shall review the recipient's procedures for determining the subrecipient's indirect cost rate, recommend changes as required, and certify the rate so that it can be relied upon by all agencies providing funds to the subrecipient. Documents setting forth the approved rates for subrecipients, and the approvals of these rates shall be made available to affected OAs/SOs and other Federal agencies.

## AUDITS OF FEDERAL FINANCIAL ASSISTANCE RECIPIENTS

1. PURPOSE. This Appendix provides departmental guidance for implementing Office of Management and Budget (OMB) Circular A-128, Audit Requirements for State and Local Governments, 49 CFR part 90, Audits of State and Local Governments, and OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations. It also provides guidance for determining audit coverage for other types of assistance recipients.
2. BACKGROUND. The Single Audit Act of 1984, 31 U.S.C. §§ 7501-7507, established audit requirements for State and local government recipients of Federal financial assistance, and is implemented by OMB Circular A-128. OMB Circular A-128 extends the provisions of the Act to public hospitals, colleges and universities, but governments may exclude these entities from single audits provided that the audits are conducted in accordance with OMB Circular A-133. OMB Circular A-133 provides audit requirements for institutions of higher education and other nonprofit organizations, and closely parallels the requirements of A-128. The requirements for audit coverage for recipients not covered under either A-128 or A-133 are included in this Appendix.

OMB has prepared compliance supplements for audits of major programs covered by A-128 and A-133. Auditors are encouraged to use them when conducting single audits.

3. REQUIRED ACTIONS.
  - a. General: Each Operating Administration (OA) and Secretarial Office (SO) shall require recipients to have audits conducted in compliance with the provisions of OMB Circulars A-128 or A-133, as appropriate. OAs and SOs are also responsible for ensuring appropriate audit coverage for other types of assistance recipients not covered by these Circulars. OMB will assign cognizant agencies for larger recipients. Smaller recipients not assigned a cognizant agency will be under the general oversight of the Federal agency providing them with the most funds. Where DOT has been designated to serve as the cognizant agency, the responsibilities shall be divided between the OAs and SOs, and the Office of Inspector General (OIG).

When the OAs, SOs or the OIG determine that additional audits are necessary, such audits shall build on the results of independent auditors if the audits meet the criteria contained in OMB Circulars A-128 or A-133. Recipients receiving less than \$25,000 a year in Federal assistance funds are exempt from audit requirements; however, they must retain appropriate records to document their compliance with the requirements of their Federal assistance awards. Recipients receiving \$25,000 or more but less than \$100,000 who do not obtain audits in accordance with A-128 or A-133 shall follow procedures prescribed by the OAs and SOs and shall ensure that Federal funds were spent in accordance with applicable laws and regulations governing the program in which they participate. The following can be used to determine recipient compliance with Federal requirements:

- (1) Recipient obtained audits made in accordance with "Government Auditing Standards" (GAS) issued by GAO.
  - (2) Previous audits of recipient operations.
  - (3) Desk reviews by Federal program officials of project documentation.
  - (4) Federal/non-Federal audits obtained by recipients.
  - (5) Evaluation of recipient operations by Federal program officials.
- b. The Assistant Secretary for Administration shall:
- (1) Issue any additional guidance as required.
  - (2) Maintain an updated list, as provided by OMB, of cognizant agency assignments for single audits.
  - (3) Assign cognizant administrative responsibility in instances where the OAs or SOs that provide funds are unable to make a determination as to who will carry out this responsibility. .

c. The OIG shall:

- (1) Obtain or provide quality control reviews of selected audits made by non-Federal auditors to ensure that audits are performed in compliance with OMB Circulars A-128 or A-133, generally accepted auditing standards and GAS., Results will be provided to the OA or SO whose program or activities are subject to audit by the entities. When appropriate, results should be provided to other interested organizations.
- (2) Ensure that audits are made in accordance with A-128 and A-133, and advise the recipient of audits that are deficient in meeting requirements. The OIG shall also notify the cognizant OA or SO of audits not meeting these requirements for followup action.
- (3) Provide technical advice and liaison to OAs, SOs, recipients, and other independent auditors, as required.
- (4) Inform other affected Federal organizations and appropriate Federal law enforcement officials (including State and local officials if necessary) of any reported illegal acts or irregularities.
- (5) Coordinate audit work performed by or for Federal/non-Federal organizations that are in addition to the audits required by A-128 and A-133 so that additional audits build upon such audits to achieve the most efficient and cost effective results.

d. Each OA and SO shall:

- (1) Establish and maintain tracking mechanisms for recording receipt of audit reports and monitoring the status of corrective actions. Recipients shall be instructed to submit an appropriate number of copies of audit reports directly to the appropriate Federal program official, and one copy of the single audit reports to the DOT National Single Audit Review Center.
- (2) Establish and enforce appropriate audit coverage for recipients not covered under A-128 and A-133. Audit requirements for these recipients shall be

established and performed for the program in a manner that ensures the Federal interest is adequately protected. Examples of effective measures are illustrated in paragraph 3a of this Appendix. Audits for these recipients shall be conducted in accordance with generally accepted Government auditing standards.

- e. Each OA and SO assigned cognizant administrative responsibility for a recipient shall:
  - (1) Insure that audits are made and reports are distributed in a timely manner and that recipients take prompt corrective action when audit reports are found not to be in compliance with A-128 and A-1.33. Copies of all audit reports and corrective action plans shall be submitted to the OIG and other appropriate officials.
  - (2) Oversee and coordinate the resolution of cross-cutting findings that affect programs of two or more Federal entities.
  - (3) Negotiate with-recipients to correct system deficiencies and resolve questioned costs for findings that affect two or more OAs and/or SOs. When mutually agreed upon by both the cognizant agency and affected OAs and SOs, specific system deficiencies or questioned costs may be resolved by the affected OA or SO. This function applies only to the DOT portion of audit findings.

DEBARMENT AND SUSPENSION

1. PURPOSE. This Appendix provides departmental procedures for implementing debarment, suspension, and ineligibility procedures.
2. BACKGROUND. The debarment and suspension procedures are intended to prevent waste, fraud and abuse in Federal procurement and nonprocurement actions. Debarment or suspension of an organization or individual from doing business with the Federal Government is not meant to be a punishment, but a procedure to ensure that federally funded business is conducted legally with responsible persons. Debarment and Suspension (Nonprocurement), 49 CFR part 29, provides rules for a Departmentwide system of debarment and suspension under nonprocurement transactions; the Federal Acquisition Regulation (FAR) part 9.4, Debarment, Suspension, and Ineligibility, provides rules for procurement actions. Both 49 CFR part 29 and the FAR provide for reciprocity between procurement and nonprocurement actions.
3. REQUIRED ACTIONS.
  - a. The Assistant Secretary for Administration shall notify the General Services Administration (GSA), at least annually, of the DOT distribution requirements of the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.
  - b. DOT Operating Administrations and Secretarial Offices administering procurement and nonprocurement transactions shall:
    - (1) Encourage recipients to subscribe to and utilize the Monthly Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs published by GSA.
    - (2) Conduct debarment and suspension investigations in accordance with 49 CFR 29.311 and 29.410, and make the final determination. Forward to GSA the required suspension or debarment information in accordance with 49 CFR 29.505, and provide a copy to the Office of Acquisition and Grant Management.



INTERGOVERNMENTAL REVIEW OF PROGRAMS AND ACTIVITIES

1. PURPOSE. This Appendix gives guidance for implementing Executive Order 12372, as amended, Intergovernmental Review of Federal Programs, and 49 CFR part 17, Intergovernmental Review of Department of Transportation Programs and Activities. Provisions of the Executive Order are based on Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, 42 U.S.C. § 3334, and intergovernmental cooperation legislation codified at 31 U.S.C. § 6506.
2. BACKGROUND. Issued on July 14, 1982, Executive Order 12372 provided a simplified system for coordination of Federal assistance programs by State and local government officials and Federal agencies. The Executive Order is implemented in the Department by 49 CFR part 17. Emphasis was placed on utilizing the States' review processes to the greatest extent possible. DOT publishes in the Federal Register a list of the departmental programs subject to the above Executive Order. States have the option of adopting a consolidated State process for review and administration of DOT assistance programs, or electing not to participate in the process. Participating States may select any or all of the DOT programs for incorporation into their process, and should notify DOT of their selections. States must designate a single agency to serve as the point of contact for this process. If no State process exists, Operating Administrations (OAs) and Secretarial Offices (SOs) are still required to meet other intergovernmental review requirements.
3. REQUIRED ACTIONS.
  - a. The Assistant Secretary for Administration shall:
    - (1) Obtain appropriate clearances and publish changes to the DOT list of programs and activities subject to 49 CFR part 17.
    - (2) Receive and distribute initial selections and subsequent changes-by States of programs and activities to be covered by a State's process.
  - b. Applicable OAs and SOs shall:
    - (1) Incorporate provisions to implement the rules listed in paragraphs 3b(2) through 3d into guidance material issued to actual and potential applicants.

- (2) Use a State's process as soon as feasible, but no more than 90 days, after a State notifies DOT of the process or of changes to the process.
- c. OAs and SOs providing assistance under programs covered by 49 CFR part 17 shall ensure that assistance projects are reviewed in accordance with that regulation. Applicants shall be instructed to follow the State process prior to submission of applications to OAs and sos if required by the State process. In those cases where the OAs and SOs cannot accommodate State process recommendations or reach a mutually agreeable solution, they shall contact the State point of contact and --explain the reason.- An informational copy of the explanation shall be sent to the Assistant Secretary for Administration for central recordkeeping and submission to the Assistant Secretary for Governmental Affairs for secretarial notification, if appropriate. The applicant may use the State process to obtain required environmental impact information pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C § 4332(2) (C).
- d. OAs and SOs which administer programs requiring, by statute or regulation, a State plan as a condition of assistance shall advise recipients where to send State plans that simplify, consolidate or substitute federally required State plans. In those cases where the OA or SO cannot accept the State's plan, they shall notify the State of the steps necessary to bring the State's plan into compliance with Federal requirements. Copies of disapprovals of modified State plans shall be sent to the Assistant Secretary for Governmental Affairs.

DEPARTMENT OF TRANSPORTATION GRANT MANAGEMENT COUNCIL

1. PURPOSE. This Appendix gives direction for the administration of the DOT Grant Management Council (GMC).
2. BACKGROUND. The GMC was formally established February 21, 1992. The GMC was created to:
  - a. facilitate the coordination of the Department's grant programs and grant management activities;
  - b. promote the orderly, concerted, and aggressive development of 'sound and effective grant management throughout the Department;
  - c. facilitate cooperation and the exchange of information and ideas between the Operating Administrations (OAs) and applicable Secretarial Offices (SOs) in grant administrative areas of mutual interest and concern;
  - d. provide a means to ensure that the requirements and interests of each OA and SO are reflected in departmental grant management policies and programs;
  - e. communicate grant management program objectives which are to be given special emphasis throughout the Department;
  - f. provide advice concerning the development and improvement of the grant management work force; and,
  - g. serve as an advisory body to the Assistant Secretary for Administration in matters dealing with grant regulations, policy, and management.

Membership of the GMC consists of a minimum of one representative from the Office of Inspector General, Office of the General Counsel, a senior grant representative from each OA and applicable SO, and representatives from the Office of Small and Disadvantaged Business Utilization, and the Office of Acquisition-and Grant Management. Attendance of other DOT grant program personnel is encouraged. The Director of the Office of Acquisition and Grant Management, or his/her designee, serves as the Chairperson.

The GMC meets quarterly or at other times as designated by the Chairperson.

3. REQUIRED ACTIONS.

- a. The Chairperson of the GMC shall:
  - (1) provide advance notification of GMC meetings and prepare agenda topics and materials;
  - (2) provide adequate staff resources-and support to the Council, its committees, and projects;
  - (3) provide a recording secretary for all GMC meetings and furnish minutes to all Council members and meeting attendees; and,
  - (4) report to the Assistant Secretary for Administration, as necessary, on the actions and recommendations of the Council.
- b. Council members or their alternates are expected to attend all scheduled meetings. Members are encouraged to submit agenda items or topics.

ADDITIONAL REPORTING REQUIREMENTS

1. PURPOSE. This Appendix gives guidance for:
  - a. Reporting DOT Federal financial assistance awards as required by 31 U.S.C. § 6102;
  - b. Maintaining records of Federal assistance programs and reporting on these programs to the Office of Management and Budget (OMB) and the General Services Administration (GSA) for inclusion in the Catalog of Federal Domestic Assistance (CFDA) in accordance with 31 U.S.C. § 6104; and
  - c. Maintaining records of lobbying disclosures of recipients of Federal-aid, and forwarding copies of required forms of lobbying disclosures, as required by 49 CFR part 20.
2. BACKGROUND. The DOT Grant Information System (GIS) is a comprehensive information system that answers questions about assistance awards, provides periodic reports on various aspects of assistance programs, and provides periodic reporting to the Federal Assistance Awards Data System (FAADS) as required by 31 U.S.C. 6102(a). Except for awards to other Federal agencies or interagency agreements, all departmental financial assistance awards shall be reported to the GIS. Information on contracts awarded under the Federal Acquisition Regulation are not included in the GIS, but are reported to the Contract Information System. Reporting is done by a variety of means, such as manually prepared data entry forms, computer disks or tapes, or PC-based data entry system. The GIS is designed to accommodate FAADS and the various Operating Administration (OA) and Secretarial Office (SO) information systems as much as practicable.

The CFDA is a comprehensive listing of all Federal assistance programs, and provides information on program history, eligibility requirements, funding levels, application procedures, and Federal program points of contact. Executive departments and agencies are required to periodically provide updated information on existing and new programs in accordance with Public Law 98-169. The Office of Acquisition and Grant Management coordinates the submission of departmental information, maintains required records, and provides guidance on reporting procedures as required.

Part 20 of 49 CFR prohibits the use of federally appropriated funds in connection with lobbying activities related to the award of a Federal contract, grant or loan.

Part 20 requires contractors and recipients of Federal assistance to disclose whether any funds other than federally appropriated funds have been used in connection with lobbying activities. Part 20 also requires that all disclosure forms (Standard Form LLL, Disclosure of Lobbying Activities) submitted by contractors and recipients be reported to Congress semiannually. The Office of Acquisition and Grant Management coordinates the submission to Congress of disclosure forms submitted to the OAs and SOs, and provides departmental guidance as required.

3. REQUIRED ACTIONS: GRANT INFORMATION SYSTEM

a. The Assistant Secretary for Administration shall:

- (1) Be responsible -for the operation of the GIS, including responding to requests for information and submitting data to FAADS.
- (2) Develop, maintain, and revise as required, all reporting information, including but not limited to: Record Layout and General Data Descriptions; DOT Form 1340.7B (10-94), DOT Grant Information System Form (see attached); and DOT Grant Information System Reporting Instructions.
- (3) Edit information submitted to the GIS, identify problem areas, and contact the submitting organization directly to resolve the problems.

b. The OAs and SOs shall:

- (1) Advise the Office of Acquisition and Grant Management of new assistance programs and make arrangements to have data submitted to the system.
- (2) Report all obligations of Federal assistance awards to the GIS by the 15th of the month following the end of each quarter. Reports shall contain obligation information for the previous quarter and any other awards not previously reported. Data shall be submitted on-magnetic tape, computer disk or diskette, on DOT F1340.7B (attached), or via a PC-based direct data entry system. The Office of Acquisition and Grant Management will provide required input forms and documentation requirements. Except when data is provided to the GIS by automated systems, a copy of the completed DOT F 1340.7B shall be included in the project file for all DOT assistance awards.

4. REQUIRED ACTIONS: CATALOG OF FEDERAL DOMESTIC ASSISTANCE

- a. The Assistant Secretary for Administration shall:
  - (1) Be responsible for DOT submission of CFDA information in accordance with OMB and GSA directives and guidance, and provide OAs and SOs with required submission guidance. Review and edit submissions, and provide a consolidated DOT input to OMB and GSA as required.
  - (2) Develop, distribute, maintain, and revise, as needed, all reporting information and materials, including reporting forms, pre-formatted diskettes, and edit checklists.
- b. The OAs and SOs shall:
  - (1) Provide the Office of Acquisition and Grant Management with a point of contact responsible for reporting CFDA data.
  - (2) Advise the Office of Acquisition and Grant Management of new assistance programs and provide information on the programs as required.
  - (3) Provide periodic information updates to the Office of Acquisition and Grant Management upon request. Content and format of submissions will be provided by the Office of Acquisition and Grant Management.

5. REQUIRED ACTIONS: REPORTS OF LOBBYING ACTIVITIES

- a. The Assistant Secretary for Administration shall submit to Congress, prior to May 1 and November 1 of each year, the required semiannual report of lobbying disclosure forms received by OAs and SOs during the previous six months. The Office of Acquisition and Grant Management shall prepare consolidated reports to the Senate and the House of Representatives and retain copies of submissions for not less than three years.
- b. The OAs and SOs shall submit copies of all lobbying disclosure forms submitted to them during the previous six-month period (October-March, April-September) to the Office of Acquisition and Grant Management by April 15 and October 15 respectively.

### DOT Grant Information System Input Form

1 Administration		2 Federal Identifier Number																3 Number Changes		4 Multiple Location Code		5 Kind of Action					6 OMB/CFDA Number				
A=FAA      O=OST B=BTS      P=RSPA G=USCG    R=FRA H=FMWA    S=NHTSA M=MARAD   T=FTA																						A=New Award B=Mod Increase C=Correction D=Deletion R=Mod Decrease									

  

7 Recipient Type																										8 Type of Instrument						9 Purpose					
A=Ed. Inst. (Public)    G=Multi County Grp    M=City    T=Transit Authority B=School Dist          H=Borough            N=Other Nonprofit    U=Other Govt. Org C=Federal Agency      J=Planning Comm      O=Large Business    V=For Profit Org D=State Agency        K=Council of Govt    P=Small Business    W=Individual E=Multi State Group    L=Port Authority     Q=Indian Tribe      Y=Ed. Inst. (Private) F=County Agency        S=Sponsored Org																										1=Grant 2=Coop. Agree 3=Direct Loan 4=Guarint. Loan 5=Insurance 6=Other						1=Construction    5=Training 2=Equipment      6=Other 3=Planning        7=Operating Assist 4=R&D or Demo    8=Safety					

  

10 Recipient Name																										11 State Application Identifier Number																									

  

12 Business Location								13 Performance Location								14 Business Location Zip Code															
State	County	City		C D	Region	State	County	City		C D	MSA																				
70 71	72 73 74	75 76 77 78	79 80	81 82	83 84	85 86 87	88 89 90 91	92 93	94 95 96 97	98 99 100 101 102	103 104 105 106																				

  

15 Award Date			16 Federal Award Amount (Right Justify - Whole Dollars)										17 Non-Federal Amount (Right Justify - Whole Dollars)										18 Estimated Completion Date			19 Funding Type		
Year	Month	Day																					Year	Month	Day	C = Cong. Mandate D = Discretionary F = Formula/Entire M = Mixed Funding		
107 108	109 110	111 112	113 114 115 116 117 118 119 120 121 122	123 124 125 126 127 128 129 130 131 132	133 134 135 136 137 138 139																							

  

20 Project Description																													

  

21 Special Narrative																													

  

22 Other Performance Counties (Optional)										23 Other Congressional Districts (Optional)										24 Reserved									
County 2	County 3	County 4	County 5	County 6	CD 2	CD 3	CD 4	CD 5	CD 6																				
220 221 222	223 224 225	226 227 228	229 230 231	232 233 234	235 236	237 238	239 240	241 242	243 244	245 246 247 248 249 250 251 252 253 254 255																			

Person to Contact Regarding this form \_\_\_\_\_  
Telephone Number \_\_\_\_\_

\* Business City/County Name \_\_\_\_\_  
\* Performance City/County Name \_\_\_\_\_  
\* Complete this information if GSA location code is not known



# **Los Angeles County Metropolitan Transportation Authority**

## **General Cost Guidelines**

The Los Angeles County Metropolitan Transportation Authority (MTA) has prepared this document as a guide to MTA staff, contractors, consultants and auditors to assure consistency in the determination of allowability, allocability and reasonableness of costs to its contracts. The Federal Acquisition Regulation (FAR) 31.205 contains the cost principles which are to be used by both contractors and auditors.

**Los Angeles County Metropolitan Transportation Authority  
General Cost Guidelines  
Specific Cost Allowability**

**FAR  
31.205  
REF**

- 1  
- 2  
- 3  
- 4  
- 5  
- 6  
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- 9  
(Reserved)  
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-20  
-21  
-22

**ALLOWABLE**

ADP Leasing Costs  
  
Bonding Costs  
Civil Defense Costs  
Compensation for Personal Services & Fringe Benefits  
  
  
  
  
Depreciation  
Economic Planning Costs  
Employee Morale Costs  
  
Gains and Losses on Sale of Capital Assets  
  
IR&D/B&P Expense  
Insurance & Indemnification  
  
Labor Relations Costs

**NOT ALLOWABLE**

Bad Debt Expense  
  
Contingencies  
Contributions & Donations  
  
Cost of Money (MTA Policy)  
  
Entertainment Costs  
Fines & Penalties  
  
Interest & Other Financial Costs  
  
Lobbying Costs

**SOMETIMES  
ALLOWABLE**

Advertising, Public Relations  
  
  
  
  
  
  
  
  
  
  
Idle Facilities

**Los Angeles County Metropolitan Transportation Authority  
General Cost Guidelines  
Specific Cost Allowability (con't.)**

<b>FAR 31.205 REF</b>	<b><u>ALLOWABLE</u></b>	<b><u>NOT ALLOWABLE</u></b>	<b><u>SOMETIMES ALLOWABLE</u></b>
-23		Losses on Other Contracts	
-24	Maintenance & Repair Costs		
-25	Manufacturing & Production Engineering Costs		
-26	Material Costs		
-27		Organizational Costs	
-28	Other Business Expenses		
-29	Plant Protection Costs		
-30	Patent Costs		
-31			Plant Conversion Costs
-32			Pre-Contract Costs
-33	Professional and Consulting Costs		
-34	Recruitment Costs		
-35	Relocation Costs		
-36	Rental Costs		
-37			Royalties
-38			Selling Costs
-39	Service and Warranty Costs		
-40	Special Tooling & Test Equipment		
-41			Taxes
-42	Termination Costs		
-43	Trade, Business, Technical and Professional Activity Costs		
-44	Training & Education Costs		

**Los Angeles County Metropolitan Transportation Authority  
General Cost Guidelines  
Specific Cost Allowability (cont'd.)**

FAR  
31.205

REF

-45  
-46  
-47  
-48  
-49  
-50  
-51  
-52

ALLOWABLE

Transportation Costs  
Travel Costs

NOT ALLOWABLE

Goodwill costs  
Executive Lobbying Costs  
Alcoholic Beverages

SOMETIMES  
ALLOWABLE

Legal & Other Proceedings  
Deferred R & D Costs

Asset Valuations Resulting from Business  
Combinations

**Specific Items:**

- Severance Pay
- 
- In-town Business Meals (business related and fully documented)
- Use Charges for Fully Depreciated Assets (subject to prior written approval by the MTA)
- 
- Bank Fees (except any form of Interest)
- Employee Parties - \$25 per person limit ( no alcoholic beverages)
- Subsistence and Travel Costs - JTR no longer applicable, however costs should be reasonable with a per day maximum for Hotel expense. (see Section 4, Travel & Business Expenses)

First Class Air Travel

Club Memberships